

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

---

THE STATE OF ARIZONA,  
*Respondent,*

*v.*

RICHARD MARTINEZ,  
*Petitioner.*

No. 2 CA-CR 2015-0147-PR  
Filed September 3, 2015

---

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.*

---

Petition for Review from the Superior Court in Pima County

No. CR20080065

The Honorable Jane L. Eikleberry, Judge

**REVIEW GRANTED; RELIEF DENIED**

---

COUNSEL

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines, Deputy County Attorney, Tucson  
*Counsel for Respondent*

STATE v. MARTINEZ  
Decision of the Court

Richard Martinez, Florence  
*In Propria Persona*

---

**MEMORANDUM DECISION**

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

---

M I L L E R, Presiding Judge:

¶1 Petitioner Richard Martinez seeks review of the trial court's order denying his "Motion to Withdraw Guilty Plea Pursuant to Ariz. R. Crim. P. Rule 17.5," which we construe as a successive petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. See *State v. Georgeoff*, 163 Ariz. 434, 437, 788 P.2d 1185, 1188 (1990) (defendant who fails to file Rule 17.5 motion before sentencing limited to post-conviction relief pursuant to Rule 32). "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find none here.

¶2 Pursuant to a plea agreement, Martinez was convicted of four counts of armed robbery and seven counts of aggravated assault, all dangerous-nature offenses, and two counts of weapons misconduct. In his of-right post-conviction proceeding, he claimed that the state had breached its agreement to refrain from recommending consecutive sentences, and the trial court ordered that he be resentenced, by a different judge, in order to afford him the benefit of the state's agreement. We agreed this was the appropriate remedy and denied Martinez's claim on review that he instead should have been permitted to withdraw his guilty plea. *State v. Martinez*, No. 2 CA-CR 2010-0066-PR, ¶ 8 (memorandum decision filed Aug. 17, 2010).

¶3 Martinez then filed a successive notice for post-conviction relief seeking to withdraw his plea of guilty, arguing the

STATE v. MARTINEZ  
Decision of the Court

state had breached its agreement to dismiss pending charges in another matter, Pima County Cause No. CR 20080113 – even though the trial court in that case had already granted his motion to dismiss CR 20080113 with prejudice, based on his plea agreement in the instant matter. On review, we agreed with the trial court that such a claim was precluded because Martinez had not raised it in his of-right petition for post-conviction relief. *See State v. Martinez*, 226 Ariz. 464, ¶¶ 2-4, 8, 250 P.3d 241, 242-43 (App. 2011).

¶4 But Martinez has continued to argue, in successive petitions and, most recently, in this motion invoking Rule 17.5, that the failure to dismiss the indictment in No. CR 20080113 at the time of his original sentence entitles him to withdraw his guilty plea in this case, even though he has since received, as promised, the benefit of having charges in No. CR 20080113 dismissed with prejudice. *See State v. Martinez*, No. 2 CA-CR 2012-0235-PR, ¶ 3 (memorandum decision filed Sept. 13, 2012); *State v. Martinez*, No. 2 CA-CR 2011-0358-PR, ¶ 5 (memorandum decision filed Mar. 15, 2012). He makes the same argument in his petition for review.<sup>1</sup>

¶5 The trial court resolved Martinez’s most recent assertion of this claim by considering its merits and denying relief in a well-reasoned ruling we need not repeat here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (appellate court need not “rehash[.]” trial court’s correct and thorough resolution of post-conviction claim). We deny relief based on the court’s correct analysis and for the separate and additional reason that this claim, still and again, is precluded pursuant to Rule 32.2(a)(3).

¶6 For the foregoing reasons, although review is granted, relief is denied.

---

<sup>1</sup> Martinez’s current contention – that No. 20080113 was dismissed for “speedy trial rights violations” and not pursuant to his plea agreement in this matter – is belied by his previous filings for post-conviction relief.